

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JUSTIN KINNEY,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner of  
Social Security Administration,

Defendant.

CASE NO. C09-5499RBL

REPORT AND RECOMMENDATION

Noted for May 21, 2010

This matter has been referred to Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Magistrates Rule MJR 4(a)(4) and as authorized by Mathews, secretary of H.E.W. v. Weber, 423 U.S. 261 (1976). This case is before the court on plaintiff's failure to respond to the court's order to show cause issued on February 5, 2010. After carefully reviewing the record, the undersigned recommends that the case be dismissed for lack of prosecution.

Plaintiff Justin Kinney, resides in Suquamish, Washington. On or about August 14, 2009, plaintiff submitted to the Court Clerk a civil complaint, alleging the Social Security Administration failed to properly consider his applications for social security benefits.

On August 26, 2009, the undersigned reviewed the record, including plaintiff's application to proceed *in forma pauperis*. On the same date, the application was granted and

1 the court explained it was plaintiff's responsibility to properly serve his Complaint on three  
2 particular defendants. *See* Doc. 2.

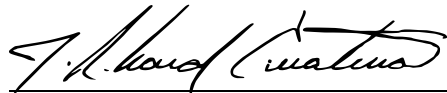
3 On February 5, 2010, noting no activity in the case, the undersigned reviewed the file and  
4 found defendant had not answered the complaint, but plaintiff had not filed proof of service.  
5 Accordingly, the court issued an order to plaintiff, directing plaintiff to file proof of service by  
6 not later than March 3, 2010. The court specifically explained that Rule 4(m) of the Federal  
7 Rules of Civil Procedure requires a defendant to be served within 120 days after the complaint  
8 is filed and that Rule 4(l) requires proof of service to be filed or made to the court. Fed. R.  
9 Civ. P. Rule 4(m) & (l).

10 To date, the clerk has not received any pleadings or documents from plaintiff responding  
11 to the court orders requiring him to file proof of service.  
12

### 13 CONCLUSION

14 Based on the foregoing and in accordance with Local General Rule GR3, the Court  
15 should dismiss this matter for lack of prosecution. Pursuant to 28 U.S.C. § 636(b)(1) and Rule  
16 72(b) of the Federal rules of Civil Procedure, the parties shall have fourteen (14) days from  
17 service of this Report to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file  
18 objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn,  
19 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is  
20 directed to set the matter for consideration on **May 21, 2010**, as noted in the caption.  
21

22 DATED this 30<sup>th</sup> day of April, 2010.  
23

24 

25 J. Richard Creatura  
26 United States Magistrate Judge